

IN THE HIGH COURT OF ORISSA AT CUTTACK
FAO No.370 of 2022

(From judgment dated 25th July, 2022 of learned Commissioner for Employee's Compensation-cum-Divisional Labour Commissioner, Cuttack passed in EC Case No.102-D of 2019)

Tata AIG General Insurance Company Ltd., represented through its Vice President, Zone Head Claims. ***Appellant***

-versus-

Subash Chandra Sahoo and Others ***Respondents***

Advocate(s) appeared in this case:-

For Appellant : Mr. Avijit Patnaik, Advocate

For Respondents : Mr. P.K. Mishra, counsel for Respondent No.1

Mr. K.K. Das, ASC for Respondent No.3

CORAM: JUSTICE B.P. ROUTRAY

JUDGMENT

8th February, 2023

B.P. Routray, J.

1. The matter is taken up through hybrid mode.
2. Heard Mr. A. Patnaik, learned counsel for the insurer – Appellant, Mr. P.K. Mishra, learned counsel for injured - claimant and Mr. K.K. Das, learned Additional Standing Counsel for Respondent No.3.

3. Present appeal by the insurer is directed against impugned judgment dated 25th July, 2022 of learned Commissioner for Employee's Compensation-cum-Divisional Labour Commissioner, Cuttack passed in EC Case No.102-D of 2019, wherein compensation to the tune of Rs.10,94,836/- (including interest) has been granted on account of injuries sustained by the injured - claimant arising out of and in course of his employment as driver of Bus bearing registration number OD 02X 5266.

4. The sole dispute is between the insurer and State – Respondent is owing to liability.

5. Mr. Patnaik, learned counsel for the Appellant submits that the vehicle was relieved from election duty at 3.40 am on 12th April, 2019 and the accident took place at 1.10 am on the same day. It is therefore contended by Mr. Patnaik that the insurer is not liable to indemnify the compensation amount, but the state is liable to pay the same.

6. Mr. Das, learned ASC on the other hand submits that till the vehicle was relieved by the Sub-Collector from election duty, no such intimation was given to him regarding meeting of accident by the claimant-driver and as such, it is presumable that the accident took place after the vehicle was relieved from election duty. So the state is not liable to pay the compensation amount.

7. The facts of the case are that, the injured – claimant is the driver of the bus bearing registration number OD 02X 5266. The bus was taken on requisition by the Sub-Collector, Gunpur along with the driver, namely Subash Chandra Sahoo for election duty on 8th April 2019. The election was completed on 11th April, 2019 and thereafter

taking the polling party it returned to the office of Sub-Collector, Gunpur. After the polling party got down from the bus, the driver also got down and thereafter was suddenly attacked by one stray bull. The injured driver fell down in a drain sustaining injuries. Accordingly, learned Commissioner upon adjudication of the claim raised under the Employee's Compensation Act, has directed for payment of aforesaid compensation amount in favour of the injured. The Commissioner by holding that the vehicle was validly insured with the Appellant has directed the insurer to indemnify the compensation amount on behalf of the owner.

8. At the outset it needs to be mentioned that the employment of the injured as driver of the bus, sustenance of injuries by him while employed as such is not disputed. Taking of the bus by the Sub-Collector on requisition for election duty on 8th April, 2019 is also not disputed. The fact of reliving the bus along with the driver at 3.40 am on 12th April, 2019 from election duty is also not disputed. The same is rather substantiated from the copy of relive order issued by the Sub-Collector, as produced by Mr. Patnaik in course of hearing. So the only dispute remains regarding the time of accident, whether it is before the vehicle was relived from election duty or after that.

9. Law is well settled that the State is liable to pay the compensation amount if the accident has taken place during the requisition period. The Supreme Court in the case of *National Insurance Co. Ltd. v. Deepa Devi and Others, (2008) 1 SCC 414* have held that where the motor vehicle was requisitioned under a statute by the statutory authority and accident occurred while the

vehicle remained under continued requisition, the State and not the registered owner nor the insurer, is liable to pay compensation.

10. Now coming to present dispute, it is the consistent case of the claimants that the accident took place at 1.10 am on 12th April, 2019. P.W.1, the injured has stated the same categorically in his evidence. In his cross-examination, the same is also confirmed and unfortunately nothing has been asked to him to dispute the time of accident. The Sub-Collector did not choose to cross-examine said P.W.1. The statement of the injured – P.W.1 has been corroborated by the owner of the bus as O.P.W.1. In these circumstances when the materials and evidences are overwhelming to suggest that the accident took place at 1.10 am, i.e. prior to the bus was relieved from election duty, it is established that the accident took place while the bus along-with driver were on election duty being requisitioned by the Sub-Collector, Gunpur. Therefore, as per the settled proposition, the state is liable to pay the compensation amount. Accordingly the insurance company is exonerated from its liability.

11. No challenge is advanced with regard to the quantum of compensation amount or any such ineligibility on the part of the injured to receive the same. Therefore, no merit is seen to interfere with the impugned award.

12. In the result the appeal is allowed. The Appellant – insurer is absolved of its liability and the direction of the learned Commissioner to that effect is set aside. It is held that the Sub-Collector, Gunpur is liable to pay the compensation amount. Thus, the Sub-Collector, Gunpur is directed to deposit the entire compensation amount as

directed by learned Commissioner within a period of four months from today, which shall be disbursed in favour of the injured claimant. Failing to deposit the compensation amount within the stipulated time, the claimant is at liberty to proceed for execution under appropriate provision of law and in such event, the Sub-Collector shall pay interest @ 12% per annum from the date of default till the date of realization.

13. The copies of depositions and documents as produced by Mr. Patnaik are kept on record.

14. An urgent certified copy of this order be issued as per rules.

(B.P. Routray)
Judge

M.K.Panda, Sr. Steno

